

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.9293 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHELABHAI BHAGWANBHAI & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 9293 of 2004
MR. SHAKTISINH GOHIL for Petitioner Nos. 1-4
MR. SIRAJ GHORI, AGP for Respondent No. 1
MR. K.K. TRIVEDI for Respondent Nos. 2-5
MR. R.N. SHAH for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 14/10/2004

ORAL JUDGEMENT

As the Notice for final disposal was issued, the
matter is finally heard today.

2. Upon hearing the learned Counsel appearing for the parties, Mr.Shaktisinh Gohil for the petitioners, Mr.Siraj Ghorl, learned AGP for respondent no.1, Mr.K.K.Trivedi for respondent nos.2 to 5 and Mr.R.N.Shah for respondent no.6, it appears that there is no dispute on the point that the issue involved in this petition is covered by a decision of this Court in the case of Meruben D/o Sorabji Pestanji Bhatporiya vs. Additional Special Secretary & Ors., reported at 2002(1) G.L.H. 68, whereby the view taken by this Court is that the proceedings under the Bombay Tenancy and Agricultural Lands Act for purchase of the property, by an agriculturist, residing outside the periphery of 5 miles/8 kms., are to be dropped in view of the amendment made in the Act and, therefore, no further discussion is required on the said aspect.

3. In the present case, as such, the entry came to be cancelled on the alleged breach of the aforesaid provisions of the Bombay Tenancy and Agricultural Lands Act. Even if it is considered that the authority, exercising power under the Bombay Land Revenue Code, could have taken into consideration the breach of other enactments, that is, the aforesaid Tenancy Act, then also, now, in view of the aforesaid position of law, in the above referred decision, read with the amendment made in the Tenancy Act, the order passed by the authority for cancelling Entry No.1596 deserves to be quashed and set aside on such ground. In addition to the above, it appears that the liability to pay the said amount to respondent no.6 is of the original owner of the property, but still, however, with a view to see that the cloud over the said entry may not be continued further and without prejudice to the rights of the petitioners to recover the said amount from the original owner of the property, the petitioners has agreed to pay the said amount outstanding within a period of one month from today.

4. Mr.K.K.Trivedi, learned Counsel appearing for respondent nos.2 to 5, submitted that as such, Maniben Limbabbhai, Dharmeshbhai Prabhubai and Tareshbhai Prabhubhai have already preferred a Civil Suit, being 181 of 1996, for setting aside the sale, and the said suit is pending and, therefore, it is submitted that even if this Court is inclined to set aside the order passed by the Revenue Authority cancelling the entry, then, it may be clarified that this order shall be without prejudice to the rights and contentions of the parties in the proceedings of the aforesaid suit.

5. In view of the above, the impugned orders passed by the authority below for cancelling Entry No.1596 dated 10th June, 1991 are quashed and set aside and Entry No.1569 dated 10th March, 1991 shall stand restored to the revenue record on condition that the petitioners shall pay the outstanding amount, as declared hereinabove, within a period of one month from today. It is clarified that restoration of Entry No.1569 dated 10th March, 1991 in the revenue record shall be without prejudice to the rights and contentions of both the sides in Civil Suit No.181 of 1996, pending before the Court of the learned Civil Judge (S.D.), Surat. The petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances of the case, there shall no order as to costs.

Direct Service is permitted.

(Jayant Patel, J.)

kamlesh*